112-69

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. ~~324~~ 83

JOSEPH COOPER, PLAINTIFF IN ERROR,

vs.

THE CITY OF NEW ORLEANS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

FILED OCTOBER 3, 1881.

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same from continuing to carry on the profession, trade, or business aforesaid until he shall have paid the said license tax and all costs and charges for the recovery thereof. Wherefore, and in consideration of the annexed affidavit, petitioners pray that a writ of injunction may issue, enjoining and restraining the defendant from continuing to carry on the profession, calling, trade, or business of owning and running a towboat or towboats to and from the gulf of Mexico until he shall have paid the license tax hereinafter claimed and all costs and charges; that the said defendant may be cited to appear and answer this petition; that in due course of law he may be condemned to pay to the city of New Orleans the sum of five hundred dollars for license tax, with ten per cent. interest thereon from the 1st day of March, A. D. 1880, until paid, with lien and privilege and right of pledge according to law; that upon the trial of this cause the said injunction may be made perpetual, and that petitioners recover costs and have general relief in the premises.

(Signed) SAMUEL P. BLAND,
Ass't City Attorney.

4 *Affidavit of Alf H. Isaacson,*

Administrator of finance, annexed to and made part of foregoing petition.—Filed March 30th, 1880.

STATE OF LOUISIANA, }
City of New Orleans. }

The undersigned, an officer of the city of New Orleans, being duly sworn, doth depose and say that the facts and allegations set forth in the foregoing petition are true.

(Signed) ALF H. ISAACSON,
Administrator of Finance.

Sworn to and subscribed before me this 30th day of March, A. D. 1880.

(Signed) P. J. SULLIVAN,
Deputy Clerk.

Order.

Let the writ of injunction issue as within prayed for without security, the city of New Orleans being by law dispensed from giving bond or security.

Dated New Orleans, the 30th day of March, A. D. 1880.

(Signed) F. A. MONROE,
Judge.

Exception and Answer.—Filed April 12th, 1880.

3d district court, parish of Orleans.

City of New Orleans
vs.
Joseph Cooper. } No. 50,325.

And now comes the said defendant by J. R. Beckwith, his attorney, and for peremptory exception to said plaintiff's demand and petition, saith that the said plaintiff ought not to further have and maintain its action against this defendant, for he saith that all and singular all the matters disclosed, pleaded, and set forth in said plaintiff's petition, in manner and form as therein pleaded and set forth, do not disclose or show any lawful demand or right of action in said plaintiff against the said defendant, and prays that said plaintiff's petition may be dismissed with costs.

And said defendant, for a further answer in this behalf, in the event that his said exception be overruled and held insufficient, and not otherwise, saith that he denies all and singular each and every allegation, matter, and thing in said petition set forth and contained, except as hereinafter specially admitted, traversed, and avoided, and prays judgment against the said plaintiff with cost. And further answering, said defendant saith that he is the owner of two several steam vessels adapted to towing vessels and commerce on and along the navigable waters of the United States; that the same and each of said vessels is in due form licensed and documented under and by the authority of the laws of the United States, and that said defendant is in all things authorized to employ said vessels and each of them in navigating the navigable waters of the United States, and that he does employ the same in navigation and commerce, as he is in law entitled to do, in the way and for the purpose best calculated to render the ownership of said vessels profitable to this defendant, and that any interference of the said plaintiff with his right to so employ said vessels is in violation of the constitution and laws of the United States and an unwarranted trespass and offense against the laws of the United States and the rights of this defendant as guaranteed and secured by the constitution and laws of the United States.

And further answering, said defendant saith that it is not true that the said city of New Orleans has, or could, or can pass, enact, or adopt any by-law or ordinance of the character and import as set forth and disclosed in said plaintiff's petition.

That said plaintiff is, and at all times was and is, prohibited by the statutes and constitution of the state of Louisiana and the statutes and constitution of the United States from adopting or enforcing any by-laws or ordinances of the description, import, or character of said pretended ordinance.

That the said pretended ordinance is null and void for the following reasons, among others:

1st. That it is an effort and attempt to impose a tax on
7 personal property not uniform with the tax imposed on other personal property taxed by said city of New Orleans under the disguise of a license tax imposed on said personal property on said vessels, in addition to the assessed value of said property as a personal asset of this defendant, liable to the general tax imposed on the same property as a portion of the personal property of this defendant, and liable to general taxation by said plaintiff.

2d. That said pretended ordinance was and is null and void; that it is in violation of the provision of the article 1st of the constitution of the United States and the fourteenth amendment thereto.

3rd. That said pretended ordinance is null and void for uncertainty, and because the said city of New Orleans was and at all times has been without authority to adopt or enforce the same against this defendant or against any other person.

Wherefore said defendant prays judgment against said plaintiff, with costs, and for general relief.

(Signed) J. R. BECKWITH,
Attorney for Defendant.

Testimony and Notes of Evidence

Taken in open court before Hon. F. A. Monroe, judge, on the 21st day of June, 1880, and filed July 12th, 1880.

Third district court, parish of Orleans.

City of New Orleans
vs. } No. 50,325.
Joseph Cooper.

8 WM. A. HUNTER sworn:

Question. Who is Joseph Cooper?

Answer. He is doing business here; he has towboats.

Q. Does he own these boats?

A. Yes, sir.

Q. Where do these boats tow from?

A. From the sea to New Orleans, and from New Orleans to the sea.

Q. How long has he been engaged in this business?

A. I cannot tell; quite a number of years.

Q. Has he been engaged in it from the first of January up to the present time?

A. Yes, sir.

(Mr. Blanc offers in evidence ordinance No. 6253 A. S., being ordinance adopted by the city council for license of 1880. It is agreed by counsel that in the event of appeal it shall be only necessary to copy in the transcript the title and caption of the ordinance, sections 39 and 83.)

By Mr. Beckwith:

Q. What are the names of the towboats?

A. The Keyser and the Joseph Cooper, jr.

Q. What is the size?

A. A little over one hundred tons.

Q. Look at the paper I now hand you, and state if that is the certificate of enrollment of one of the vessels—this one for the Cooper?

A. Yes, sir. (Offered in evidence, document marked
9 "A.")

Q. Look at the paper I now hand you.

A. This is the "Keiser's." (Offered in evidence, marked "B.")

Q. They are steam towboats?

A. Yes, sir.

Q. Will you state the business they are engaged in—how they are used?

A. Towing vessels from the sea to New Orleans, and from New Orleans back.

Q. Taking vessels from the sea up the river to New Orleans, and from the city back?

A. Yes, sir.

Q. Mr. Cooper lives in the city?

A. Yes, sir.

Q. Do you keep the accounts of Cooper?

A. I do.

Q. What is your relation to him?

A. Book-keeper—a little of everything.

Q. This towing is for hire?

A. Yes, sir.

Q. Do you know what the income from those towboats was last year?

(Objected to as immaterial. Objection overruled as going to the effect of the evidence. Bill reserved.)

Q. Can you state the gross earnings for a year past of the "Keyser?"

10 A. That is hard to tell, as there are so many repairs.

(Mr. Blanc offers in evidence the budgets of the city of New Orleans.

Also offers to prove by the witness in court that the city of New Orleans has under its ordinance, offered in evidence, collected about $180,000.00 for licenses for 1880, of which over one hundred thousand dollars was collected previous to the passage of the act of the legislature of 1880.

Objected to as immaterial. Objection overruled. Bill reserved.)

S. P. Blanc, sworn, says:

Up to the present time the city has received in the vicinity of $180,000.00 from the license tax imposed by ordinance No. 6253 upon professions, callings, and business for the year 1880, and that previous to the enactment of the act No. 119, approved April 10th,

1880, the city had collected in the vicinity of $100,000.00 for said licenses.

By Mr. Beckwith:

Q. How much license tax did you collect between the time this ordinance went into effect and the time when the constitution of the state went into effect?

11 A. There was nothing collected under ordinance 6253 previous to the first of January, and probably nothing collected under the said ordinance for some day after the beginning of the year.

Q. There was nothing then collected between the time of the adoption of this ordinance and the time the present constitution of the state went into effect?

A. No, sir; nothing was collected between the time of the adoption of the ordinance on the 21st December and the time the constitution went into effect.

Extract from Ordinance No. 6253,

To establish the rate of licenses for professions, callings, business, &c., offered in evidence by counsel for plaintiff, and filed June 21st, 1880.

Ordinance No. 6253 A. S.

AN ORDINANCE to establish the rate of licenses for professions, callings, and other business for the year 1880.

MAYORALTY OF NEW ORLEANS,
CITY HALL, *December 24th*, 1879.

Be it ordained by the council of the city of New Orleans, That the yearly rate of licenses from and after the first day of January, 1880, for professions, callings, and other business carried on

12 within the corporate limits of New Orleans, are hereby assessed and directed to be collected at the sums specially set forth in the following sections:

* * * * * * *

SEC. 39. Every member of a firm or company, every agency, person, or corporation owning and running towboats to and from the gulf of Mexico, five hundred dollars.

Every member of a firm or company, every agency, person, or corporation owning and running job boats within the corporate limits, fifty dollars.

* * * * * * *

SEC. 83. This ordinance shall take effect and be in force from the first day of January, 1880.

Adopted by the council of the city of New Orleans December 23d, 1879. Yeas, Chevalley Glynn, Isaacson, Marks, Medley.

(Signed) T. W. PATTON,
Mayor.

A true copy.
(Signed) ROBT. C. WOOD,
Secretary.

Document marked "A."

Certificate of enrollment of the steam propeller "Joseph Cooper," offered in evidence by counsel for defendant, and filed June 21st, 1880. License No. 57. Official number ——.

Numerals } Letters.
75959. }

The United States of America.

13 License of vessel of twenty tons or upwards to carry on the coasting trade for one year.

DISTRICT OF NEW ORLEANS,
PORT OF NEW ORLEANS.

In pursuance of Title L, "regulation of vessels in domestic commerce," of the Revised Statutes of the United States, Joseph Cooper of New Orleans, Louisiana, and John J. Williams having given bond that the steam propeller called the Joseph Cooper, jr., whereof the said Williams is master, burden 103 tons and 1 hundredths, a appears by her enrollment issued at this port, numbered thirty (30) and dated October twentieth, eighteen hundred and seventy-seven, shall not be employed in any trade, while this license shall continue in force, whereby the revenue of the United States shall be defrauded; and having also sworn that this license shall not be used for any other employment than is herein specified, license is hereby granted for the said steam propeller called the Joseph Cooper, jr., of New Orleans, to be employed in carrying on the coasting trade for one year from the date hereof, and no longer.

Given under my hand and seal at the port of New Orleans, in the district of New Orleans, this 27th day of October, in the year one thousand eight hundred and seventy-nine.

(Signed) J. D. CRAWFORD,
C. Deputy Collector of Customs.

(Signed) P. O. LABATUT,
C. Deputy Naval Officer.

14 DISTRICT AND PORT OF NEW ORLEANS,
COLLECTOR'S OFFICE, *May 8th*, 1880.

I hereby certify the above to be a true copy of the record on file at this office.

(Signed) J. D. CRAWFORD,
[SEAL] *C. Deputy Collector.*

Document marked "B."

Certificate of enrollment of the steam propeller C. C. Keyser, offered in evidence by counsel for defendant and filed June 21st, 1880. License No. 46. Official number ——.

Numerals } Letters.
125359. }

United States of America.

License of vessel of twenty tons or upwards to carry on the coasting trade for one year.

DISTRICT OF NEW ORLEANS.
PORT OF NEW ORLEANS.

In pursuance of Title L, "regulation of vessels in domestic commerce," of the Revised Statutes of the United States, Joseph Cooper, of New Orleans, Louisiana, and Joseph Averill having given bond that the steam propeller called the C. C. Keyser, whereof the said Averill is master, burden 104 tons and 98 hundredths, as appears by her enrollment issued at this port, numbered 18 and dated October thirteenth, eighteen hundred and seventy-nine, shall not be employed in any trade, while this license shall continue in force,
15 whereby the revenue of the United States shall be defrauded; and having also sworn that this license shall not be used for any other employment than is herein specified, license is hereby granted for the said steam propeller, called the C. C. Keyser, of New Orleans, to be employed in carrying on the coasting trade for one year from the date hereof, and no longer.

Given under my hand and seal at the port of New Orleans, in the district of New Orleans, this thirteenth day of October, in the year one thousand eight hundred and seventy-nine.

(Signed) J. D. CRAWFORD,
C. Deputy Collector of Customs.

(Signed) P. O. LABATUT,
C. Deputy Naval Officer.

DISTRICT AND PORT OF NEW ORLEANS,
COLLECTOR'S OFFICE, *May 10th*, 1880.

I hereby certify the above to be a true copy of the record on file at this office.

[SEAL.] (Signed) A. J. DUMONT,
Deputy Collector.

Ordinance No. 6251 A. S.

Budget of revenues of the city of New Orleans for the year 1880, offered in evidence by counsel for plaintiff, and filed June 21st, 1880.

MAYORALTY OF NEW ORLEANS,
CITY HALL, *December 24th*, 1879.

No. 6251.—Administration series.

AN ORDINANCE adopting as estimate of the revenues of the
16 city of New Orleans for the year 1880.

Be it ordained, etc., That the following estimate of revenues for the year 1880 be and the same is hereby adopted:

Tax of one and one-half per cent. on the valuation of real estate and personal property, as per assessment rolls—total $91,117,919.57	$1,366,768 79
Licenses	280,000 00
Markets	225,000 00
Bills receivable	9,799 50
Interest, printing and law charges	20,000 00
Wharves & landings	15,000 00
Levee dues	21,000 00
Fines and fees	10,000 00
Ground-rents	4,000 00
Cemeteries	1,000 00
Sugar sheds	6,000 00
Pound fees	1,000 00
Rents	2,500 00
Miscellaneous	100,000 00
Total	2,062,068 29
Less 20 per cent., as per act No. 38, approved February 14th, 1879	412,413 65
Total	$1,649,654 64

Adopted by the council of the city of New Orleans December 23d, 1879.

Yeas: Chevalley, Glynn, Isaacson, Marks, Medley.

(Signed) T. W. PATTON, *Mayor.*

A true copy.

(Signed) ROBT. C. WOOD, *Secretary.*

17 *Ordinance No. 6252 A. S.*

Budget of expenditures of the city of New Orleans for the year 1880, offered in evidence by counsel for plaintiff, and filed June 21, 1880.

MAYORALTY OF NEW ORLEANS,
CITY HALL, *December 24th*, 1879.

No. 6252, Administration Series.

AN ORDINANCE adopting an estimate of expenditures of the city of New Orleans for the year 1880.

Be it ordained by the council of the city of New Orleans, That the following estimate of expenditures (including police and schools,) for the year 1880 be and is hereby adopted:

Department of Improvements, Administrator's office:		
Salaries and expenses	$3,600 00	
Street wages, etc	117,860 95	
Street repairs, etc	30,000 00	
Streets, bridges, crossings, and wrings	30,000 00	
Draining machines	23,539 05	
Draining canals and levees		
Canal bridges, repairs, etc	5,000 00	
		$210,000
Department of Commerce, Administrator's office:		
Salaries and expenses	2,410 00	
Wharves and landings	8,400 00	
Markets	1,580 00	
18 Drawbridges	5,110 00	
		$22,500 00
Department of Water Works and Public Buildings, Administrator's office:		
Salaries and expenses	2,600 00	
Court-house salaries and repairs	4,340 00	
Aged, infirm, and indigent	5,000 00	
Repairs, public buildings	9,000 00	
City-hall building repairs, etc	1,500 00	
Public sinks contract	2,400 00	
Insane asylum, salaries and expenses	14,160 00	
Small-pox hospital, salary visiting physician	5,000 00	
		$44,000 00
Department of Police, Administrator's office:		
Salaries and expenses	3,700 00	
Public squares, salaries and expenses.	2,500 00	
Public pounds, salaries and rents	3,400 00	
Workhouse salaries, boys' house of refuge, salaries, provisions, etc	12,800 00	
Cost of removal of sick and dead, salaries, etc	3,000 00	
Cemeteries, repairs, etc	400 00	
Conveying prisoners, forage, etc	300 00	
19		$27,000 00
Department of Assessments, Administrator's office:		
Salaries and expenses	3,200 00	
Board of assessors, salaries and expenses	7,300 00	
		$10,500 00

Department Public Accounts:		
Salaries and expenses.....		$10,800 00
Department of Finance:		
Salaries and expenses.....		$16,700 00
Surveyor's Office:		
Salaries and expenses.....	13,000 00	
Dredge boats.....	4,000 00	
		$17,000 00
Tax Mortgage Registers:		
Salaries and expenses.....		$3,600 00
Mayor's Office:		
Salaries and expenses.....		$4,200 00
City Hall Building:		
Salaries of city librarian, keeper of archives, janitor and porters, and classification of records of district courts.....		$6,300 00
City Council:		
Salaries and expenses.....		$3,500 00
City Attorney's Department:		
Salaries and expenses.....		$9,000 00
Public Printing:		
Proceedings of counsel, promulgation of ordinances, reports and advertisements, tax lists.		$4,000 00
Tax Bills, etc.:		
Printing tax ledgers, bills, etc., making tax bills.....		$8,000 00
Mayor and Administrators:		
Salaries.....	49,500 00	
Less 30 per cent.....	14,850 00	
		$34,650 00
Board of Health.		$10,000 00
Lighting City:		
Lighting with gas.....	69,000 00	
Lighting with oil.....	18,000 00	
		$87,000 00
Fire Department:		
Firemen's Charitable Association for city against contract for $140,000	100,000 00	
Firemen's Charitable Association for fifth district against contract for $12,000.....	8,600 00	

Firemen's Charitable Association for sixth district against contract for $18,000	$12,900 00	
Firemen's Charitable Association against contract for 7th district, $8,000	5,700 00	
		$127,200 00
21 Criminal Justice:		
Superior criminal court	$8,000 00	
First district court	6,000 00	
Criminal, sheriff, parish prison, and court fees	50,000 00	
District attorney, salary	4,000 00	
Jury commissioners, salaries, etc	1,800 00	
Recorder's courts, justices of the peace, constables	25,000 00	
Rent of police stations	11,125 13	
		$105,925 13
Miscellaneous:		
Suppers of orphans	$42,000 00	
Law charges	12,000 00	
Coroners	10,333 35	
Recording deaths	850 00	
Fire alarm telegraph, sixth district	10,700 00	
Judgments, $700,000; less amount carried forward, $680,000	20,000 00	
Interest and redemption, $619,750, estimated at their proportionate share	300,000 00	
City park	88,020 00	
Police department	200,000 00	
Public schools	200,000 00	
Contingent	3,876 16	
		$887,779 51
Total		$1,649,654 64

Adopted by the council of the city of New Orleans, December 23rd, 1879.

22 Yeas—Chevalley, Glynn, Isaacson, Medley.
Nays—Marks.

(Signed) T. W. PATTON,
Mayor.

A true copy.

(Signed) ROBT. C. WOOD,
Secretary.

Case Submitted.—Extract of Minutes, June 21st, 1880.

3rd dist. court, parish of Orleans.

City of New Orleans
vs.
Joseph Cooper. } No. 50,325.

This case came on for trial; S. P. Blanc for the city of New Orleans; J. R. Beckwith for Joseph Cooper.

When, after hearing pleadings, evidence, and counsel, the court took time to consider.

Judgment.

3rd dist. court, parish of Orleans.

City of New Orleans
vs.
Joseph Cooper. } No. 50,325

In this case the court, considering the law and the evidence to be in favor of plaintiff—

It is ordered, adjudged, and decreed that the city of New Orleans do have judgment against the defendant, Joseph Cooper, for the sum of five hundred dollars, with 10 per cent. interest thereon from March 1st, 1880, till paid, and costs; with lien and privilege
23 and right of pledge according to law.

Judgment rendered June 22nd and signed June 26th, 1880.

(Signed) F. A. MONROE,
Judge.

Motion and order for suspensive appeal.—Extract from Minutes and filed June 28, 1880.

3rd dist. court, parish of Orleans.

City of New Orleans
vs.
Joseph Cooper. } No. 50,325.

On motion of J. R. Beckwith, attorney for the defendant herein, and on suggesting to the court that the defendant feels aggrieved by the final judgment herein rendered against him, and that he is advised that there is error in said judgment to his prejudice, and that he desires to appeal therefrom, and on further suggesting to the court that the constitutionality and legality of a tax imposed on him by the city of New Orleans, a municipal corporation of this state, is in contestation in this cause, and that the defendant denies the constitutionality and legality of said tax—

It is ordered that the said defendant be, and he is hereby, allowed a suspensive appeal from said judgment herein to the supreme court

of the state sitting at New Orleans, returnable in said court on the first Monday in November, A. D. 1880, as the law directs,
24 said appeal to be suspensive upon the defendant giving bond with sufficient surety in the sum of eight hundred dollars, conditioned as the law directs.

Appeal Bond.—Filed June 28, 1880.

3rd dist. court, parish of Orleans.

City of New Orleans
vs.
Joseph Cooper. } No. 50,325.

Know all men by these presents that we, Joseph Cooper as principal and Henry T. Vennard, of the city of New Orleans, as surety, are held and firmly bound unto Benjamin Armbruster, clerk of the third district court for the parish of Orleans, his successors, executors, administrators, and assigns, in the sum of eight hundred dollars, for the payment whereof we bind ourselves, our heirs, executors, and administrators firmly by these presents. Sealed with our seals, and dated in the city of New Orleans, on this twenty-eighth day of June, in the year of our Lord one thousand eight hundred and eighty.

Whereas the above-bounded Joseph Cooper this day filed a motion of appeal from a final judgment rendered against him in the matter of the City of New Orleans *vs.* Joseph Cooper, No. 50,325, in the third district court for the parish of Orleans, on the 22nd day of June, 1880, and signed on the 26th day of June, 1880—

Now the condition of the above obligation is such, that the
25 above-bound Joseph Cooper shall prosecute his appeal, and shall satisfy whatever judgment may be rendered against him, or that the same shall be satisfied by the proceeds of the sale of his estate, real or personal, if he be cast in the appeal; otherwise, that the same Henry T. Vennard, surety, shall be liable in his place.

(Signed) JOSEPH COOPER. [SEAL.]
(Signed) H. T. VENNARD. [SEAL.]

Signed, sealed, and delivered in the presence of—
(Signed) J. R. BECKWITH.

Certificate of clerk.

STATE OF LOUISIANA:

I, Joseph Garidel, deputy clerk of the third district court for the parish of Orleans, do hereby certify that the foregoing thirty-five (35) pages do contain a complete, true, and correct transcript of all the proceedings had, evidence adduced, and documents filed in and on the trial of this cause, entitled The City of New Orleans *vs.* Joseph Cooper, No. 50,325 of the docket of said court.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court at the city of New Orleans, on this twenty-

sixth day of July, in the year of our Lord one thousand eight hundred and eighty, and in the 105th year of the independence of the United States of America.

[SEAL.] JOE GARIDEL,
D'y Clerk.

26 (Endorsed:) United States of America, state of Louisiana. Supreme court of the state of Louisiana. City of New Orleans *vs.* Joseph Cooper. No. 8005. Appeal from the third district court for the parish of Orleans. Supreme court of Louisiana. Filed Oct. 30th, 1880. (Signed) Emile Dupré, d'y clerk.

Motion and affidavit for trial by preference.—Filed November 1, 1880.

City of New Orleans *vs.* Eclipse Towboat Co., *vs.* Joseph Cooper, *vs.* E. A. Yorke. } Nos. 7992, 8005, 8,011.

In the supreme court state of Louisiana.

On motion of Sam. P. Blanc, assistant city attorney for the city of New Orleans, and on suggesting reference to the affidavit hereto annexed, made under and by virtue of the 9th section of article No. 45 of Acts of 1870, extra session—

It is ordered that the above case be called and set for hearing by preference.

27 *Affidavit.*

Personally appeared Sam. P. Blanc, who, being first sworn, says that the above-entitled case is one of serious interest, in which a speedy decision is desirable.

SAM. P. BLANC.

Sworn to and subscribed before me this 1st day of Nov., 1880.

GEORGE W. DUPRÉ,
Clerk.

Order assigning cause for trial.—Extract from the Minutes.

MONDAY, *November 1st*, 1880.

The court was duly opened. Present: Their honors, Edward Bermudez, chief justice, and Felix P. Poche, Robert B. Todd, William M. Levy, Charles E. Fenner, associate justices.

City of New Orleans *vs.* Eclipse Towboat Company. } No. 7992.

Same
vs.
Joseph Cooper. } No. 8005.

Same.
vs.
E. A. Yorke. } No. 8011.

On motion of Samuel P. Blanc, assistant city attorney for the city of New Orleans, and the affidavit on file being considered, it is ordered by the court that these three causes be called and set down for trial, with preference.

Cause continued.—Extract from the Minutes.

FRIDAY, *December 3d*, 1880.

28 The court was duly opened. Present: Their honors, Edward Bermudez, chief justice, and Felix P. Poche, Robert B. Todd, William M. Levy, Charles E. Fenner, associate justices.

City of New Orleans
vs.
Eclipse Towboat Co. } No. 7992.

Same
vs.
Joseph Coop[er]. } No. 8005.

Same
vs.
E. A. Yorke and D. J. Hamilton, agents. } No. 8011.

Order assigning cause for trial.—Extracts of Minutes.

TUESDAY, *December 14th*, 1880.

The court was duly opened. Present: Their honors, Edward Bermudez, chief justice, Felix P. Poche, Robert B. Todd, William M. Levy, Charles E. Fenner, associate justices.

City of New Orleans
vs.
Joseph Cooper. } No. 8005.

On joint motion of counsel for both parties, it is ordered by the court that this cause be set down for trial, with preference, on Saturday, the 18th instant.

Cause continued.—Extracts from the Minutes.

SATURDAY, *December 18th*, 1880.

The court was duly opened. Present: Their honors, Edward Bermudez, chief justice, Robert B. Todd, Wm. M. Levy, Charles E. Fenner, associate justices. Absent: Felix P. Poche, associate justice

City of New Orleans
vs.
Joseph Cooper. } No. 8005.

29 This case was called for trial; whereupon, on motion of Samuel P. Blanc, esq., of counsel for plaintiff and appellee, the court ordered said cause to be continued to and reinstated on the docket for trial on the 11th proximo, the date heretofore assigned for its trial.

Cause Continued.—Extract from the Minutes.

TUESDAY, *January 11th*, 1881.

The court was duly opened. Present—their honors, Edward Bermudez, chief justice; Felix P. Poche, Robert B. Todd, Charles E. Fenner, associate justices. Absent—William M. Levy, associate justice.

City of New Orleans
vs.
Joseph Cooper. } No. 8005.

This case was ordered by the court to be continued with preference.

Cause Submitted.—Extract from the Minutes.

TUESDAY, *March 25th*, 1881.

The court was duly opened. Present—their honors, Edward Bermudez, chief justice; Felix P. Poche, Robert B. Todd, William M. Levy, Charles E. Fenner, associate justices.

City of New Orleans
vs.
Eclipse Towboat Co. } No. 7992.

Same
vs.
Joseph Cooper. } No. 8005.

Same
vs.
E. A. Jake & J. D. Hamilton, ag'ts. } No. 8011.

These three cases were taken up together for the purpose
30 of argument, and called for *for* trial, and having heard argument, Samuel P. Blanc, esq., of counsel for plaintiff and appellee, and from J. R. Beckwith, esq., of counsel for the defendant and appellants.

The court took said cases under advisement upon the briefs on file and to be filed within three days.

Opinion of the Court.—Filed May 2nd, 1881.

City of New Orleans
vs.
Joseph Cooper. } No. 8005.

Mr. Justice TODD:

This case presents the same issues as the case of the City of New Orleans *vs.* Eclipse Towboat Company just decided, and for the reasons therein assigned the judgment appealed from is affirmed, with costs.

Opinion of the court referred to in the case of the City of New Orleans vs. *Joseph Cooper.*—Filed May 2nd, 1881.

City of New Orleans
vs.
Eclipse Towboat Company. } No. 7992.

Mr. Justice TODD:

The city of New Orleans sues the defendant for the amount of a license tax ($500), with interest & costs, for the year 1880, im-
31 posed by ordinance of the city council of the 23rd of December, 1879, upon every member of a firm or company, every agency, person, or corporation owning & running towboats to and from the gulf of Mexico.

The defendant company is the owner of towboats which are enrolled & licensed for the coasting trade pursuant to acts of congress, & employed in towing vessels between the city of New Orleans & the gulf.

The grounds of defence are—

1st. That the license tax in question is a duty upon tonnage and a regulation of commerce, and that the ordinance imposing it is therefore in violation of art. 1, sec. 8, par. 3 of the constitution of United States, which provides that congress shall have power "to regulate commerce with foreign nations, and among the several states, & with the Indian tribes;" & also sec. 10, par. 3, of the same article, which declares that no state "shall, without the consent of congress, lay any duty on tonnage."

2nd. That it is in violation of the state constitution, because the tax is not equal & uniform, nor imposed in accordance with the limitation therein prescribed.

From a judgment in favor of the city the defendant has appealed.

The right of a man to the use of his property, or to pursue any legitimate calling or occupation, may be regarded as an inherent right, not derived from any positive legislation. The protec-
32 tion afforded by a government to the enjoyment of the right imposes the obligation on the citizen to contribute to the support of such government, and authorizes the imposition of taxes as the equivalent for the protection thus afforded.

The objects of taxation under our present & former constitutions have been property & income & occupations. The tax upon occupations is termed a license tax, to distinguish it from the tax on property.

This power to tax for the support of the government is one of the chief attributes of sovereignty, and this power on the part of the state extends over all objects embraced within its sovereignty, subject only to such limitations as the state may prescribe for itself or to the inhibitions of the federal constitution. Nathan *vs.* Louisiana, 8 Howard, 73; McCulloch *vs.* Maryland, 4 Wheat., 429; Brown *vs.* same, 12 Wheat., 419; Transportation Co. *vs.* Wheeling, 9 Otto, 273.

This being an acknowledged right of a state, any restriction of it by the only supreme authority to which it is subject, the constitution of the United States, must be shown by the express language of that instrument, or result from the clearest implication.

There seems no necessary connection between this power of taxation in a state and the language of the federal constitution invoked as a limitation in that power, and we have high authority for
33 holding that the framer of that instrument did not construe the clause referred to as bearing upon the subject of this power. We read in the Federalist, which is regarded by the highest judicial tribunals as important authority on the subject of constitutional construction, & the production of Mr. Hamilton, who was disposed to construe liberally the powers of the general government, as follows:

"That the states would possess an independent and uncontrollable authority to raise their own revenue for the supply of their own wants, and with the single exception of duties on imports and exports would, under the plan of the constitution, retain that authority in the most absolute and unqualified sense. And that an attempt on the part of the general government to abridge them in the exercise of it would be a violent assumption of power, unwarranted by any article or clause in the constitution." Federalist, No. 32.

And in the Passenger cases, 7 Howard, 283, the supreme court of the United States, through its organ, Chief Justice Taney, held—

"That, though a ship when engaged in the transportation of passengers is a vehicle of commerce, and within the power of regulations granted to congress, yet it has always been held that the power to regulate commerce, as conferred, does not give to congress the power to tax a ship, nor prohibit the state from taxing it as the property of the owner when he resides within his own jurisdiction.
34 That the authority of congress to tax ships is derived from the express grant of power in the eighth section of the first article to tax and collect taxes, duties, imports and excises, and that the inability of the states to tax the ship as an instrument of commerce arises from the express prohibition contained in the tenth section of the same article."

The tenth section referred to being that clause which prohibits the

states from laying any impost or duties on imports or exports except what may be necessary for executing its inspection laws.

In the case of Transportation Co. *vs.* Wheeling, 9th Otto, 273, Mr. Justice Clifford, as the organ of the court, after referring to the extract from the Federalist quoted above, and speaking of the Federalist as "ever having been regarded as entitled to weight in any discussion as to the true intent and meaning of the provisions of the fundamental law," proceeds as follows:

"From which it follows, if the writer of that publication is correct, that the power granted to regulate commerce did not prohibit the states from laying impost duties upon merchandise imported from foreign countries; that the commercial clause (*i. e.* the clause invoked against the license in this case) does not apply to the right of taxation in either sovereignty, the taxing power being a distinct and separate power from the power to regulate commerce, and that
35 the right of taxation in the states remains over every subject where it before existed, with the exception only of those expressly or impliedly prohibited. Then he mentions as the only prohibitions those denying to a state to levy duties on imports or exports except such as are absolutely necessary for executing its inspection laws, & to levy any duty on tonnage without the consent of congress.

In harmony with these discussions, it has been held that steamboats, ships, ferry-boats, &c., are liable to taxation as property at their home ports. (2 Cal., 590; 39 Mo., 460; 3 Ind., 481; 9 Ala., 234; 48 Barb., 157; 16 Wall., 472; 17 How., 596.)

"A state tax which remotely effects the efficient exercise of a federal power is not for that reason alone prohibited." (Railroad Co. *vs.* Peniston, 18 Wall., 5.)

"A state may impose a tax upon the capital of a corporation created by it, although the corporation is created for the purpose of towing vessels & carrying freight & passengers." Such is the express language of the supreme court of this state in the case of Union Towboat Company *vs.* Bordelon, 7 An., 192. And in the course of his opinion Mr. Justice Preston, as the organ of the court, well remarked:

"It is said that the tax is a regulation of commerce, & conflicts with the power of congress to regulate commerce with foreign
36 nations & among the several states. * * * We cannot conceive that a question can arise under the article of the constitution of the United States quoted."

All taxation upon property within one state may remotely affect its commerce with a sister state. Thus a tax upon stores may increase the price of merchandize brought here by merchants from abroad; a tax upon warehouses, the price of storage of produce from the western states, and a tax upon our markets may enhance the price or perhaps curtail the quantity of supplies brought to them. Yet these taxes have never been questioned. (See also 11 Mich., 43; 8 Ohio, 521; 48 Barb., 157.)

And as more closely analogous to the case at bar, it has been held "that a state law requiring every express company or railroad com-

pany having a business extending beyond the limits of a state to take out a license is valid, for it is a tax on the business of making contracts within the state for transportation beyond it." (Osborne *vs.* Mobile, 16 Wall., 479; 15 Wall., 293; 49 Ala., 404; Delaware R. R. Tax, 18 Wall., 208.)

Upon a question of so much importance, and one which has so largely occupied the attention of courts distinguished for their learning and ability, and been so extensively discussed, we prefer simply to cite the authorities which must command respect, rather to elaborate our own views. It suffices that we state our conclusion on this point from a mature consideration of them, and which
37 is, that there is nothing in the clause of the federal constitution referred to giving congress the power to regulate commerce with foreign nations or between the states that is infringed by the ordinance in question imposing the license assailed, and it would only be by a strained and narrow construction that any conflict or even any direct relation between the two could be discovered.

II. Nor can the license be properly regarded as a duty on tonnage, which is made the second ground of attack. We have shown by the authorities cited that a state can levy a tax directly on a ship as property, although it may be engaged in commerce.

This seems to us to be more like a direct duty on tonnage than the mere imposition of a license on a company using vessels in their business.

Besides, the very meaning of the term of itself shows that this prohibition has no direct bearing or pertinency to the question at issue.

Cooley says:

"Duties on tonnage the states are forbidden to lay; the meaning of the prohibition seems to be that vessels must not be taxed as vehicles of commerce according to capacity, it being admitted that they may be taxed like other property." (Cooley Const. Lim., [4th ed.,] 606.)

III. It is urged also that the license and enrollment of the
38 vessels belonging to this company under the federal laws deprives any inferior authority of the power to exact a license for the use of such vessels in their business.

The authorities do not sustain this position, but on the contrary are in direct opposition to it. (Burroughs on Taxation, 149, 155; 16 Grat., 139; 18 How., 71; 16 B. Mon., 699; 1 Black., 603; 5 Wall, 475.)

IV. In regard to the alleged conflict between this ordinance and the state constitution, it suffices to say that this question was before us in the case of Vergnole *vs.* City of New Orleans, 33 A., 35, which was a suit to enforce the payment of a license imposed by the city council at the same time, and where the same ground of utility was set up, and in that case we held for the reasons therein assigned that there was no provision of the state constitution that rendered the license or the ordinance imposing it void. We adhere to that ruling.

This disposes of all the issues presented by the pleadings in the

case, and finding no error in the judgment appealed from the same is affirmed, with costs.

Judgment and decree.—Extract from the Minutes.

MONDAY, *May 2nd*, 1881.

The court was duly opened pursuant to adjournment. Pres-
39 ent: Their honors Edward Bermudez, chief justice, and Felix P. Poche, Robert B. Todd, William M. Levy, Charles E. Fenner, associate justices.

City of New Orleans
vs.
Joseph Cooper. } No. 8005.

On appeal from the third district court for the parish of Orleans. The judgment appealed from is affirmed with costs.

Petition for rehearing.—Filed May 6, 1881.

City of New Orleans
vs.
Joseph Cooper. } No. 8005.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court:

The petitioner, Joseph Cooper, the defendant and appellant in the above entitled cause, respectfully prays this court to reconsider, review, and grant a rehearing in this cause, and respectfully insists that in affirming the judgment of the lower court this court has fallen into error, and failed to give effect to the right, title, privilege, and exemption claimed and set up by this defendant under the constitution and laws of the United States, giving congress of the United States the power and authority to regulate commerce and the instruments by which it is carried on, and the laws of congress enacted to carry out the power so vested in the United States.
40 And petitioner further shows unto the court that he is advised and believes that such rehearing should be granted and allowed for the following reasons, among others:

First. That the court erred in declaring valid an ordinance of the city of New Orleans imposing a condition that after a vessel has in all things complied with all the requirements of Title 40 of the Revised Statutes of the United States, for the regulation of vessels in domestic commerce, and all other laws of the United States relating to vessels as instruments of commerce, and has become a "vessel of the United States," before such vessel can be engaged in domestic commerce in the United States its owner or agent must pay to the municipal corporation of New Orleans five hundred dollars, or, in default, rot at the wharf under perpetual injunction, inhibiting its use in any manner.

Second. That the court fell into error in not declaring the ordinance in question absolutely null and void, by reason of the provisions of sec. 8 of article 1 of the constitution of the United States and the acts of congress adopted under the authority thereof.

Third. That the court erred and acted in violation of the constitution of the United States in decreeing in effect a perpetual injunction against the use of the vessel Joseph Cooper in commerce,
41 when it was not and is not a matter of dispute that the owner of said vessel had in all things complied with all the laws of the United States, and was allowed a full and complete license and authority to use and navigate said vessel in commerce, without hindrance or molestation from greedy, petty municipal corporations, and has in all things failed to give effect to the absolute rights and privileges conferred on the appellant by the constitution and laws of the United States.

Fourth. The court erred in deducing from authorities warranting taxation of property in ships at its assessed value in the hands of the owner at his domicil, any authority to impose a specific tax or license as a condition precedent to "owning and running" a vessel of the United States duly licensed under the laws of the United States.

Fifth. This court erred in its conclusion that any of the rules relating to land transportation over land routes where the state grants corporate existence to the carrier upon such conditions as it may elect, are applicable to navigation of vessels on the waters of the United States, over which the general government has taken complete control under the authority of the federal constitution.

Sixth. The appellant refers the court to article 1 of the federal constitution, title 40 of the Revised Statutes of the United
42 States; Gibbons *vs.* Ogden, 9 Wheat., 1; Sennot *vs.* Davenport, 22 How., 227; Foster *vs.* Davenport, 22 How., 224, as conclusive on the question that the power to regulate commerce by determining what burdens shall be imposed on vessels of the United States as conditions precedent to their use as instruments of commerce is vested in congress and has been exercised.

The court, in its opinion, has confounded dormant power to control commerce with that power exercised. The rule is not the same as at present settled by federal jurisprudence. All state laws repugnant to a law of congress are invalid by reason of repugnancy to the federal law passed in pursuance of power granted by the constitution.

If a city ordinance which ties a vessel up to the wharf, or puts her in the docks to rot unless the owner, after full compliance with the federal law, before he can "own and run" his vessel, does not comply with the exactions of the corporation, which may be made prohibitory, is not repugnant to the navigation laws of the United States, there is some new definition of the meaning of the word so recent that it has not as yet been carried into the lexicons.

Petitioner respectfully asks the court to reconsider its action in this cause and grant and allow a rehearing in this cause, to the end that

the appellant may be secured in his manifest rights plainly
43 granted and extended to him by the constitution and laws of the United States.

All of which is respectfully submitted.

J. R. BECKWITH,
Counsel for Appellant and Petitioner.

Rehearing Refused.—Extract from the Minutes.

SATURDAY, *May 28th*, 1881.

The court was duly opened. Present: their honors, Edward Bermudez, chief justice; Felix P. Poche, Robert B. Todd, William M. Levy, Charles E. Fenner, associate justices.

City of New Orleans
vs.
Joseph Cooper. } No. 8005.

It is ordered that the rehearing applied for in this case be refused.

Petition and Order for Writ of Error.—Filed May 30th, 1881.

Supreme court, state of Louisiana.

City of New Orleans
vs.
Joseph Cooper. } No. 8005.

To the Hon. E. Bermudez, chief justice supreme court:

The petition of Joseph Cooper, the defendant in this cause, represents that the final judgment of the supreme court in this cause is the final judgment of the highest court of law or equity in
44 the state of Louisiana, having cognizance of said cause; that the defendant feels aggrieved by the final judgment of the court in this cause, and is advised that there is error in said judgment to his prejudice.

That, as appears by the record herein, rights, privileges, and exemptions which accrue to him under and through the constitution and laws of the United States, were set up and relied upon by the defendant in this cause, and has been disallowed to him, and decided against the right and exemptions set up and relied on by him in this cause by the judgment of the court of record herein.

Wherefore petitioner prays that your honor, as the chief and presiding justice of said court, will allow unto your petitioner a writ of error returnable to the supreme court of the United States at its next term, and will approve bond and sign the requisite citations to operate a supersedeas in this cause, as prescribed by law; and will ever pray.

J. R. BECKWITH,
Counsel for Defendant & Petitioner.

Order.

Let a writ of error be allowed herein, returnable in the supreme court of the United States at its next regular session; and, further, let the said writ of error operate a supersedeas, upon the defendant Joseph Cooper giving bond, with good and sufficient surety, in the sum of one thousand dollars, within the delay allowed by law.

New Orleans, May 30th, 1881.

(Signed) E. BURMUDEZ,
45 *Chief Justice.*

Writ of Error.—Filed May 30th, 1881.

Joseph Cooper, plaintiff in error,
vs.
City of New Orleans, defendant in error. } No. 8005.

Copy of a writ of error lodged in the clerk's office of the supreme court of the state of Louisiana.

Copy in pursuance of the statute in such cases made and provided, this 30th day of May, one thousand eight hundred and eighty-one.

(Signed) J. R. BECKWITH,
Attorney of Plaintiff in Error.

UNITED STATES OF AMERICA, *ss.*

The President of the United States of America to the honorable the judges of the supreme court of the state of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the state of Louisiana before you, or some of you, being the highest court of law or equity of the said state in which a decision could be had in the said suit between the city of New Orleans, plaintiff, and Joseph Cooper, defendant, numbered 8005 of the docket of
46 said court, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of or an authority exercised under said state, on the ground of their being repugnant to the constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause in the constitution or of a treaty or statute of or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Joseph Cooper, defendant in said cause, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein

given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning same, to the supreme court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said supreme court to be then and there held, that the record and proceedings aforesaid being in-
47 spected, the said supreme court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, chief justice of the said supreme court, the thirtieth day of May, in the year of our Lord one thousand eight hundred and eighty-one.

(Signed) F. A. WOOLFLEY,
[SEAL.] *Clerk of the circuit court of the United States for the eastern district of Louisiana.*

Allowed by—
E. BERMUDEZ,
Chief justice supreme court of Louisiana.

Bond for Writ of Error.—Filed May 30th, 1881.

City of New Orleans } No. 8005.
vs.
Joseph Cooper.

Know all men by these presents, that we, Joseph Cooper, H. T. Vennard, as principal and as sureties, are held and firmly bound unto the city of New Orleans in the full and just sum of one thousand dollars, to be paid to the said city of New Orleans, certain attorney, successor or assigns, to which payment well and truly to be made we
48 bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this thirtieth day of May, in the year of our Lord one thousand eight hundred and eighty-one.

Whereas lately, at a session of the supreme court of the state of Louisiana, in and for the state of Louisiana, at New Orleans, in a suit depending in said supreme court, wherein the city of New Orleans is plaintiff and Joseph Cooper is defendant, judgment was rendered against the said Joseph Cooper, defendant; and the said Joseph Cooper having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court to reverse the judgment in the aforesaid suit, and a citation directed to the said city of New Orleans, defendant in error, citing and admonishing said defendant in error to be and appear at the supreme court of the United States to be holden at Washington the second Monday of October next—

Now, the condition of the above obligation is such, that if the said Joseph Cooper, plaintiff in error, shall prosecute his writ to effect, and answer all damages and cost if he fail to make his plea good,

then the above obligation to be void; else to remain in full force and virtue.

JOSEPH COOPER, [L. S.]
Per J. R. BECKWITH.
H. T. VENNARD. [L. S.]

New Orleans May 30, 1881.

Bond approved—
E. BERMUDEZ,
Chief Justice of Louisiana.

49 *Affidavit.*

UNITED STATES OF AMERICA, } ss.
Eastern district of Louisiana, }

Personally appeared Henry T. Vennard, who, being duly sworn, deposes and says that he is surety on the within bond; that he resides 156 Jackson street, New Orleans, Louisiana, and is worth the full sum of one thousand dollars over and above all his debts and liabilities and property exempt from execution.

(Signed) H. T. VENNARD.

Sworn and subscribed before me this 30th day of May, 1881.
(Signed) T. V. COUPLAND,
Commissioner U. S. circuit court, district of Louisiana.

Clerk's Certificate.

UNITED STATES OF AMERICA.

Supreme court of the state of Louisiana.

I, George W. Dupré, clerk of the supreme court of the state of Louisiana, holding session at the city of New Orleans, do hereby certify that the foregoing forty-nine pages contain a full, true, and complete copy of the transcript of the proceedings had in the third district court for the parish of Orleans, in a certain suit wherein the city of New Orleans was plaintiff and Joseph Cooper was
50 defendant, and also of all the proceedings had in this supreme court on the appeal taken by said Joseph Cooper, which appeal is now on the files of this honorable court under No. 8005.

In testimony whereof I have hereunto set my hand and affixed the seal of the honorable court, at the city of New Orleans, this twenty-fifth day of June, anno Domini one thousand eight hundred and eighty-one, and in the one hundred and fifth year of the independence of the United States of America.

[SEAL.] GEO. W. DUPRE,
Clerk.

Certificate of the Judge.

UNITED STATES OF AMERICA.

Supreme court state of Louisiana.

I, Edward Bermudez, chief justice of the supreme court of the state of Louisiana, do hereby certify that George W. Dupré is clerk of the supreme court of the state of Louisiana, holding session at the city of New Orleans; that the signature of George W. Dupré to the within certificate is in the proper handwriting of him, the said
51 clerk; that said certificate is in due form of law, and that full faith and credit are due to all of his official acts as such.

In testimony whereof I have hereunto set my hand and seal, at the city of New Orleans, the twenty-fifth day of June, anno Domini 1881, and in the one hundred and fifth year of the independence of the United States of America.

[SEAL.]

E. BERMUDEZ,
Chief Justice.

52 The United States of America, supreme court of the state of Louisiana.

DISTRICT OF LOUISIANA.

The President of the United States to the city of New Orleans, defendant in error, greeting:

You are hereby cited and admonished to be and appear at a supreme court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the state of Louisiana, wherein Joseph Cooper is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said Joseph Cooper, plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R Waite, chief justice of the supreme court of the United States, this ninth day of June, in the year of our Lord one thousand eight hundred and eighty-one.

W. B. WOODS,
Associate Justice U. S. Supreme Court & Circuit Justice 5th Circuit.

STATE OF LOUISIANA, }
Parish of Orleans. }

J. R. Beckwith, being first duly sworn, deposeth and saith that he on this 10th day of June, A. D. 1881, at the city hall in the city of New Orleans, parish aforesaid, served the within citation on the defendant in error by delivering a duplicate copy thereof to the mayor of said city, Joseph Shakespeare, in person, after reading the same to him, and left the same with him, explaining to him that this new

citation was served on him and the defendant in error by reason of a clerical error in the date of the former citation herein signed by the chief justice of the supreme court of Louisiana, whereby it bore test on the , 1871, instead of , 1881, as was intended.

J. R. BECKWITH.

Sworn to and subscribed before me this 10 June, 1881.

[SEAL.] T. McC. HYMAN,
D'y Clerk Supreme Court La.

53 (Endorsed:) Supreme court, No. 8005; Joseph Cooper, plaintiff error, *vs.* The City of New Orleans, def't in error; citation; marshal's return. Filed 10 June, 1881. T. McC. Hyman, d'y clerk.

54 The United States of America, supreme court of the state of Louisiana.

DISTRICT OF LOUISIANA.

The President of the United States to the city of New Orleans, greeting:

You are hereby cited and admonished to be and appear at a supreme court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the state of Louisiana, wherein Joseph Cooper is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said Joseph Cooper, plaintiff in error as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, chief justice of the supreme court of the United States, this 30 day of May, in the year of our Lord one thousand eight hundred and seventy-one.

[SEAL.] E. BERMUDEZ,
Chief Justice.

STATE OF LOUISIANA, } *ss.*
Parish of Orleans, }

J. R. Beckwith, being duly sworn, deposeth and saith that on the 31st day of May, 1881, he served the within citation upon the said defendant in error, the City of New Orleans, by delivering a duplicate and copy thereof to Joseph A. Shakespeare, the mayor of said city, and informing him of the contents thereof, and leaving the same with him at the city hall in the city of New Orleans.

J. R. BECKWITH.

Sworn to and subscribed before me this 31 May, 1881.

[SEAL.] T. McC. HYMAN,
D'y Clerk Supreme Court La.

55 (Endorsed:) Supreme court of the state of Louisiana, No. 8095; Joseph Cooper, pl'ff in error, *vs.* The City of New Orleans, def't in error; citation; marshal's return. Filed 31 May, 1881. T. McC. Hyman, d'y clerk.

(Endorsement on cover:) Louisiana supreme court, No. 324; Joseph Cooper, plaintiff in error, *vs.* The City of New Orleans. Filed 3rd October, 1881. 55 pages.

112-69

Supreme Court of the United States.

OCTOBER TERM, 1883.

No. 324

JOSEPH COOPER, PLAINTIFF IN ERROR,

versus

THE CITY OF NEW ORLEANS.

Error to Supreme Court of the State of Louisiana.

BRIEF OF PLAINTIFF IN ERROR.

J. R. BECKWITH,
Counsel for Plaintiff in Error.

E. F. Hansell, Stationer and Printer, 30 Camp Street, New Orleans.

Supreme Court of the United States.

OCTOBER TERM, 1883.

No. 325.

JOSEPH COOPER, PLAINTIFF IN ERROR,

versus

THE CITY OF NEW ORLEANS.

Error to Supreme Court of the State of Louisiana.

BRIEF OF PLAINTIFF IN ERROR.

Statement of Case.

With other powers granted to the city of New Orleans by the charter in force when this controversy arose (charter of 1870), was the power to levy and impose a license tax on trades, professions and callings, granted in the following words:

" * * * * * And also, for the purposes of this act, to levy, impose and collect a license upon all persons pursuing any trade, profession or calling, and to provide for its collection; *and said license tax shall not be construed to be a tax on property.*" Acts extra session 1870, page 37, section 12.

Section 21 of the same act (statutes 1870, page

40) provides that "all licenses imposed by the city, not paid on the 31st day of July, shall be seizable after thirty days publication in the official journal, in certain courts of record in this city."

"And upon the prayer of the city, through its proper representatives, any court of competent jurisdiction shall enjoin the said person or persons so liable to pay a license tax, and who shall refuse or neglect to pay the same, from continuing to carry on such business or profession until he shall have paid the same, and all costs and charges for the recovery and enforcement of the claim therefor."

The city, under the charter of 1870, imposed by ordinance a license tax for the year 1880, and in section 39 of the ordinance sought to impose a license tax of five hundred dollars upon the plaintiff in error by the following enactment:

"*Every member of a firm or company, every agency, person or corporation owning and running towboats to and from the Gulf of Mexico, five hundred dollars.*" Record, page 6.

On March 30, 1880, the city sued Cooper, in the distict court for the parish of Orleans, for five hundred dollars license exaction for 1880, due, it was claimed, by the terms of the above ordinance; averring that Cooper was the owner of towboats, and was carrying on the business of running towboats from the city of New Orleans to the Gulf of Mexico, and from the gulf to the city without license from the city; praying for interest from March 1st, 1880, and that Cooper be enjoined from running his towboats in the

towing trade between the city and the high seas until he should pay the license, cost, and interest.

Cooper appeared and plead that he was the owner of two towboats, adapted to towing vessels and commerce on and over the navigable waters of the United States; that his vessels were duly licensed, enrolled and documented by and under the authority and laws of the United States; and that he had lawful right, under his federal license, and the constitution and laws of the United States, to use his vessels in his business, without any additional license and exaction from any municipal corporation. Record, page 3.

In proof it appeared that the towboats owned by Cooper were the Keyser and Joseph Cooper, Jr.; that the boats were used in towing vessels arriving at or departing from the port of New Orleans, in the general commerce of that port, from the sea to New Orleans, and also on their outward bound voyages from the city to the high seas, towing such vessels a distance of about one hundred and twenty miles on their voyage; that the Joseph Cooper, Jr., was enrolled at the port of New Orleans on the 27th day of October, 1879; was of 103.01 tons burden, and was duly licensed under title 50, U. S. R. S.; that the Keyser was of 104.98 tons burden, enrolled and licensed on the 30th of October, 1879, at New Orleans.

On the 26th of June, 1880, the State court render-

ed judgment against Cooper for five hundred dollars license and ten per cent. interest, "*with lien, privilege and right of pledge according to law.*" What this lien and privilege was, or whether it applied to the two towboats, or the estate of Cooper, real and personal, or to him personally, is not clear.

Cooper appealed from this judgment to the Supreme Court of the State, where the judgment was affirmed, rehearing refused and writ of error sued out.

In the State Supreme Court the appellant (plaintiff in error here) did not insist that the license demanded by the city of New Orleans was a tonnage tax, as stated in the opinion of that court, but did insist upon the matters set forth in his answer, and in the petition for rehearing addressed to that court, and printed on page 22 *et seq.* of the printed record, with the exception that the chapter of the Revised Statutes referred to was chapter 50 instead of chapter 40—an error in transcribing, as is evident from the text, the chapter being that which relates to "the regulation of vessels in domestic commerce."

ASSIGNMENT OF ERROR.

I.

The Supreme Court of Louisiana erred in deciding that the ordinance of the city of New Orleans, imposing a license of five hundred dollars as a condition precedent to the use and navigation of the

towboats of plaintiff in error, in towing vessels from the city of New Orleans to the high seas, and from the high seas ,or Gulf of Mexico, to the city of New Orleans, on or over the public waters of the United States, was valid, and not repugnant to the constitution of the United States.

II.

The court erred in holding that the city of New Orleans or any municipal corporation can add to the requirements or conditions imposed by the laws of the United States, as conditions which, when complied with, will entitle the owner of an American vessel to embark that vessel in coasting trade, or in assisting for hire vessels employed in commerce between other ports and the port of New Orleans, in passing to and from that port and other domestic and foreign ports.

III.

The court erred in its judgment and decree that a municipal corporation can regulate the commerce of the United States, either internal or foreign, by demanding of resident or non-resident owners of vessels a municipal license, as a condition precedent to the use of a vessel duly licensed by the government of the United States under the federal navigation acts.

IV.

The court erred in rendering judgment against the plaintiff in error, and should have rendered judgment against the defendant in error.

The federal question involved in this case is probably single and very narrow, and may be stated as follows: The owner of two steam vessels, adapted to towing sailing vessels trading with New Orleans sailing under flags of all nations, arriving from and departing for all ports in the world, procures a license from the federal authorities, under which he is authorized to give for hire the steam power of his towboats to aid all such vessels in the prosecution of their voyages through one hundred and twenty miles of water, not navgiable by such vessels without the use of steam, or at least navigable with uncertainty, great delays, and difficulties of current and channel. Can a petty municipal government take hold of such owner of towboats, whether he be resident or non-resident, and say to him: "It is true that you hold the full license of the federal government to embark your vesaels in the proposed commerce; it is true that nearly all of the water over and through which you propose to tow vessels is without the limits of our municipal territory: yet your towboat shall rot at the wharves of the city, and all approaching vessels shall rot at the mouth of the Mississippi river, one hundred and twenty miles away from our boundaries and jurisdiction, unless you pay for and obtain from us authority to use your vessel in this commerce. Your federal license is of no avail; you must get your authority to embark your vessel in

commerce from the tax-collector or license-commissioner of our town.

We believe if this power exists in the city of New Orleans or in any municipality it must rest upon different reasoning and better authority than can be gleaned from the opinion of the State Supreme Court, as printed in the record.

It is not claimed here and was not claimed in the State court that this five hundred dollar license is a tax on tonnage. The very statute under which the city claims the power to impose the license declares, "*said license tax shall not be construed to be a tax on property.*"

The city stands in the unambiguous position of demanding five hundred dollars as the price of her municipal permission that Mr. Cooper may navigate his towboats for the term of one year, irrespective of the value or tonnage of the vessels.

Neither is it claimed here, nor was it claimed in the State court, that Mr. Cooper, being a resident of the city of New Orleans, is in any manner exempt from taxes assessed upon the assessible value of his towboats, as part of his personal property, liable to taxation upon its assessed value. This right is not disputed or in contest. The right has been exercised and acquiesced in.

The enrollment of Cooper's towboats, the Keyser and Joseph Cooper, Jr., established their national character, and that they were of over twenty tons

burden; this class of vessels—that is, vessels under twenty tons—having license, with no enrollment. By federal statute "such vessels, and no others, shall be deemed vessels of the United States, entitled to the privileges of vessels employed in the coasting trade or fisheries." R. S., sec. 4311.

The license from the United States was not only a grant of permission, but right and authority to Joseph Cooper to employ both of the vessels "in carrying on the coasting trade for one year from the date hereof, and no longer." This grant was personal to Cooper. Cooper had complied with all laws of the United States, and could lawfully embark in towing sea-going vessels, without hindance from any State or municipal authority.

Unless Sinnot vs Davenport et al 22 How. 225, and Foster et al. vs. Davenport et al., ibid. 244, are both overruled, the judgment of the State Supreme Court is erroneous.

In Sinnot vs. Davenport the question arose under an act of Alabama which required the owners of all vessels navigating the waters of Alabama, before their boats could leave the port of Mobile, to file a statement in writing, in the office of the probate judge of Mobile county, setting forth the name of the vessel, the names and residences of the owners, with the amount of interest of each owner in the vessels; subjecting the owners, in the event of non-compliance, to fine of five hundred dol-

lars. This court held this act of Alabama unconstitutional and void, because it imposed on the owners of vessels in the coasting trade conditions and requirements additional to the requirements of federal law. That the license granted by the federal authority was full and complete authority to the owners to embark their vessel in the coasting trade, on public waters within the State of Alabama, and that State could not make additional prereqiusite conditions.

In Foster vs Davenport, 22 How. 244, the same penalty was sought to be enforced against the owners of a steamboat used in the port of Mobile, as a towboat and lighter to vessels in the river and bay, towing light draft vessels up to the wharves in Mobile. Nelson, justice, as the organ of the court, says:

"This steamboat was employed in aid of vessels engaged in the foreign or coasintg trade and commerce of the United States, either in the delivery of their cargoes or towing the vessels themselves to the port of Mobile. The character of the navigation and business in which it was employed cannot be distingushed from that in which vessels it towed or unloaded were engaged. The lightering or towing was but the prolongation of the voyage of the vessels assisted to their port of destination." And held the statute of Alabama void.

Until these cases are overruled by this court the judgment below is erroneous and should be reversed.

So much of the reasonning of the State Supreme

Court, printed in the record, as relates to the power of the State to assess the property of its residents invested in ships, in the mass of the assessible property of its residents, and impose a tax upon such valuation, was uncalled for. It was not claimed in the lower court, nor is it asserted here, that there can be any doubt of the right of the State to mass property of its residents invested in vessels with the other personal property of its citizens, for purposes of general taxation for revenue, if such taxation is based upon the assessed value of the vessel property. This question was never in the case. The State courts both overlooked the fact that the very statute under which the right to impose the license in dispute is claimed, declares: "*And said license tax shall not be construed to be a tax on property.*" City charter 1870, acts extra session 1870, page 37, sec 11, 20th subdivision.

Nor was it ever claimed that the license was in form a tax on tonnage. All that has been insisted upon against the license, and as a federal question, is that it is not in the power of any State or municipality to prohibit any person, owning a duly enrolled and licensed vessel of the United States, from embarking his vessel in any lawful coasting trade, other than ferrying, until he has paid for and obtained an additional permission from the petty municipal authorities of the city, town or village in which

he happens to reside, or has an agency if non-resident.

The federal decisions and authorities relied on by the State Supreme Court, as warranting the license exaction in question, are: Weber vs. Harbor Commissioners, 18 Wall. 71; Smith vs. Maryland, 18 How. 57; Pervear vs. Commonwealth, 5 Wall. 475 (a case in no manner pertinent); Conway et al. vs. Taylor's Executors, 1 Black. 603.

Had the case been decided at the time of the hearing in the State court, Wiggins Ferry Co. vs. East St. Louis, 107 U. S. 365, would doubtless have been also cited; and we assume the entire list of cases in the reports of this court, involving ferry privileges, ferry boats, wharves and wharf boats, are relied on by the defendant in error.

None of the cases cited are in point or sustain the conclusion or judgment of the State court. Smith vs. Maryland, 18 How. 71, only involves the control of the State over submerged territory *within* its boundaries, and the protection of fish in such waters.

Weber vs. Harbor Commissioners, 18 Wall. 57, only involves the right of the State or municipal authorities to regulate wharves and water front in harbors within its territory.

The same is true of all cases that can be cited, where the right to establish wharves or wharf boats is involved. The grant or power in all this class of

cases does not, in any legal sense of the word, involve any grant of or right on any public water, or relate to navigation. The grant of wharf rights and privileges by the State to individuals, or the exercise of such right by the State, is the grant of or the exercise of a right *on land*—the right to control the landing of goods and passengers, not the control of vessels as instruments of commerce.

It is difficult to comprehend why the ferry franchise cases are cited to support the validity of the city ordinance in question, or warrant municipal meddling with instruments of commerce on navigable public waters.

We assume that the following proposition cannot be refuted, and is law: The right of a State to grant and confer ferry grants and privileges, when exercised to its fullest lawful extent, confers upon the grantee no lawful dominion on or over any public navigable water, which he did not possess, in common with all other citizens of the United States, before the grant from the State; that the grant of ferry rights or franchises by a State to an individual does not, as a grant, in any legal sense, confer on the grantee any right or dominion on or over any public navigable water, but is legally only a grant of a *right on land*, relating exclusively, *as a grant*, to the shore, and to specific lands over which the State holds control, deriving its only right to grant the franchise from the fact that such franchise ope-

rates only upon a *locale*, which is land subject, *as land*, to the dominion of the State.

All there is of substance in a ferry grant on the borders of public navigable waters relates to the *landing place*, not to the water. In other words, a ferry franchise is an incorporeal hereditament, relating to and inseparably connected with land. It confers upon the owner of the franchise (if exclusive in form) the exclusive right to use a certain portion of the shore and land for embarking and landing persons and property, to be ferried or which have been ferried. The right to navigate public waters to and from the granted ferry landing comes from another sovereign and jurisdiction, and is regulated by law having another source.

"A ferry is in respect of the landing place and not of the water. The water may be to one and the ferry to another." 13 Viner's Abridgment, 208. A; 3. Kent's Com. 459.

In The People vs. Babcock, 11 Wend. 590, it was held that a ferry grant related to the shore.

The leading case in the reports of this court is Conway et als. vs. Taylor's Executors, 1 Black. 603, where Swayne, justice, as the organ of the court, expressly lays down the same doctrine, This case has never been questioned to our knowledge.

It is clear that the cases relating to ferry grants cannot be cited to support the position of the State Supreme Court. Any license tax or permission ex-

acted from the grantee of a ferry franchise is predicated upon a grant made on land, relating to land and *not to navigation*.

Wiggins Ferry Co. vs. East St. Louis, 107 U. S. 365, does not carry the ferry franchise doctrine further than former cases; and could have been determined upon the authority of Conway vs. Taylor's Executors, 1 Black., unless it was the intention to overrule the latter case and declare that a ferry grant is a grant on or relative to water. There is nothing in the opinion to indicate such intention. There is, however, matter in the opinion which will be urged as a declaration that States have the right to embargo all coasting vessels with oppressive license demands, as a condition precedent to engaging such vessels in commerce. The cases cited in the opinion indicate that the court had no such intention. Transportation Co. vs. Wheeling, 77 U. S. 273, cited as establishing the right of a State to tax ships, only declared the right to collect tax upon the assessed value of the vessel, as in case of other property, and is authority for nothing more. This is not disputed in this case. The difference between a tax on vessel property, assessed at its value, as a portion of the personal property of a resident citizen, and the license in question in this case, declared by the late statute under which it is demanded *not a tax on property*, is too manifest to warrant discussion.

The question which the court is called upon to

solve in this case is, can any State or municipality within the United Sates add anything to title 50 of the United States Revised Statutes, or regulate or add to the conditions upon which towboats can lawfully lend their aid to vessels arriving at and departing from our seaports, carrying on domestic or international commerce?

Is it in the power of any petty municipal corporation to meet the owner of a coasting vessel, holding the full license of the federal government to engage his vessel in any lawful coasting trade, and tell him: Your federal license and permission is all very well so far as it goes, but your vessel shall rot at the wharf in idleness unless you pay me five hundred dollars for my license and permission to employ your vessel. *I do not exact this five hundred dollars from you as a tax on your property in your vessel*, but as the price of my permission to you to use or avail yourself of your federal coasting license, and use your vessel in the general commerce of the United States, as an instrumeat of that commerce.

If it be answered that such power does exist in States and municipal corporations, then Sinnot et al vs. Davenport et al., and Foster et al. vs. Davenport et al., 22 How., were erroneously decided, and must be reversed.

Respectfully submitted,

JAS. R. BECKWITH,

Counsel for Plaintiff in Error.

NOTE: By stipulation between counsel, on file, it is agreed that the case of E. A. Yorke et al. vs. New Orleans, No. 325, and the Eclipse Towboat Co. vs. the same, No. 326, of the present docket, involve the same questions; and that the decree to be made in this case is the proper decree in the three cases, and shall be rendered in the same form in the three cases.

J. R. BECKWITH,
Counsel for Plaintiff in Error.

112-69

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 329.

JOSEPH COOPER, PLAINTIFF IN ERROR,

versus

THE CITY OF NEW ORLEANS.

Error to the Supreme Court of Louisiana.

BRIEF FOR DEFENDANT IN ERROR.

S. P. BLANC,
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For Defendant in Error.

A. W. Hyatt, Print, 73 Camp St., N. O.—28.284

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SYLLABUS.

First. A State tax on a commercial pursuit or business, carried on within the State, levied alike on all engaged in the same occupation, making no discriminations, and not imposed with reference to the manner of using the instruments of commerce, so as to regulate their employment, is not a regulation of commerce.

Second. A State tax on the business of running towboats is not inhibited by any provision of the Federal Constitution, and may be exacted of the owner of the boats, notwithstanding the licensing and enrollment of the boats, under Federal laws.

This cause or writ of error brings before this Court, for review, only the question—whether the imposition of a license tax on the calling, trade or occupation of running and operating towboats within municipal limits, and to the Gulf of Mexico, is a restraint or regulation imposed on commerce, and as such, violative of the laws and Constitution of the United States.

"a Federal power, is not for that reason alone prohibited." Railroad Co. vs. Peniston, 18 Wall. 5.

The threads of commerce reach to all businesses, and if every act which draws upon these clews be, for that reason, prohibited, no tax is laid but that it may be held unlawful.

No business has become more essential to commerce than that of telegraphy, and every tax upon it, no matter what its form, must, in some way, affect the affairs of those who conduct it, and yet it is beyond question that "a State tax on *telegraph* "companies is valid." Western Union Telegraph Co. vs. Richmond, 26 Gratt. 1. Also a tax on the gross "receipts accruing "from messages which originated or terminated at points outside "the State." Same vs. Meyer, 6 A. L. T. (N. S.) 500.

A tax on goods brought from one State to another, when not imposed, *because* of their conveyance, would, under the defendant's arguments, be a regulation of commerce; still it is held that "the mere conveyance of property from one State to anoth-"er will not exempt it from taxation by the State." License Cases, 5 How. 504; S. C. 13 N. H. 536; State vs. Pinckney, 10 Rich. 474.

Express companies afford another example of a business brought into existence by commerce, purely dependent on it for its maintenance, and now necessary to the conduct of trade.

Yet, "a tax on the gross receipts of an express company "engaged in carrying articles between the States is valid."

Southern Express Company vs. Hood, 15 Rich. 66; Walcott vs. People, 17 Mich. 68.

The decisions of the Courts have been no less positive upon the right of a State to tax the business of commerce, than the things in and with which the merchant trades.

A tax on the carrier would be valid, but one upon freight, *because carried*, would be void. State Freight Tax, 15 Wall. 232.

"A State tax on a money or exchange broker is valid. No "one can claim exemption from a general tax on his business "within the State, on the ground that the products sold may be

"used in commerce." Nathan vs. Louisiana, 8 How. 73; 8 Wall. 123, 148; Burrough's Taxation, p. 155.

"A State law imposing a tax on the business of a foreign "insurance company, doing business within the State, is not a "regulation of commerce." People vs. Thurber, 13 Ill. 554.

"A State law requiring a license from non resident traders "to vend foreign merchandise, is not a regulation of commerce." Sears vs. Commissioners, 36 Ind. 267.

"A State law requiring a license fee from ferryboats car- "rying passengers between the States and a foreign nation, is "valid." Chilvers vs. People, 11 Mich. 43.

"A State law requiring every express company, or railroad "company, having a business extending beyond the limits of the "State, to take out a license, is valid, for it is a tax on the busi- "ness of making contracts within the State for transportation "beyond it." Osborne vs. Mobile, 16 Wall. 479; S. C. 44; Ala. 493; Southern Express Co. vs. Mayor, 49 Ala. 404.

A study of the decisions cited will lead to the conclusion that a State tax on commercial occupations, carried on within the State, levied alike on all engaged in the business, making no discriminations, and not imposed with reference to the manner of using the instruments of commerce, so as to regulate their employment, is not a regulation of commerce nor contrary to the Federal Constitution.

A tax which does "not discrimate as to the residence or "citizenship of the person engaged in the business, is not a regu- "lation of commerce." Speer vs. Comm. 23 Gratt. 935.

In concluding this subject, let it be remembered that, as the close connection between the occupation of defendant and commerce, is the pretext on which he builds his defense to the tax, so will a close relation between all other businesses and trade be equally good to encourage a similar resistance from many who have hitherto properly and unquestioningly admitted their liability. The Ship Agent, Ship Broker and Ship Chandler, and

a multitude of occupations intimately connected with commerce, would rise to demand an immunity not theirs.

II

It is next contended by the defense, that inasmuch as the vessels they use, are licensed and enrolled under the Federal laws, the owners thereof cannot be taxed by the State on the business of running them.

If the tax sued for is not a regulation of commerce, there is no inhibition in the Constitution of the United States against it, and it is a legal tax.

The licensing and enrollment of a vessel under the Federal laws is required before such vessels may be used. They constitute the vouchers from the National Government as to the fitness of such vessels for the use intended, and of their compliance with the regulations of shipping. They are not intended and do not purport to relieve the owners from State taxation, not inhibited by the central constitution. Notwithstanding the licensing and enrollment of a vessel for a special purpose, neither the vessel itself nor the owner is relieved from the effect of State laws of taxation or otherwise, not conflicting with the constitutional and exclusive rights of the National Government.

"The enrollment and licensing of a vessel confer on it no "immunity from the valid laws of a State." Baker vs. Wise, 16 Grat. 139; Smith vs. State, 18 How. 71.

"A steamboat enrolled and licensed under the laws of the "United States, is not authorized to engage in transporting goods "and passengers across a navigable river flowing between two "States, in violation of the laws of a State granting of the exclu- "sive ferry privilege to others." Newport vs. Taylor, 16 B. Mon. 699; S. C, 1 Black., 603.

We have seen that the tax sued for is not contrary to the Federal Constitution; therefore it follows: that the State has not yielded its power to impose such a tax, and if Congress also

poseses the power to impose a license tax, that of the State is at least current.

"A State may tax or prohibit a business which is taxed by "Congress, for the power of taxation is concurrent." Pervear vs. Commonwealth, 5 Wall. 475.

The imposition and collection of a license tax by a higher power, is neither exclusive of, nor incompatible with, the power of an inferior government to levy a similar tax. Burroughs, Taxation, p. 149.

The Federal license is authority to use the vessel, but not a patent of exemption to owner from State taxation.

Every man has an inherent right to use his property, under a law higher than any of the enactments of men, but this high right does not relieve him from contributing to the support of the Government which protects him in the enjoyment of that right and makes his occupation of value to him.

A party who obtains a license to trade, from the Government (U. S.), is not an officer, nor exempt from taxation by a State. State vs. Bell, Phillips, 76.

"The license tax imposed by the Federal Government on "avocations does not affect the right of the State to tax the "same pursuit, or to modify, control or prohibit them altogether. "The license of the Federal Government is a mere receipt for "taxes, and confers no authority to prosecute the pursuit; that "authority is derived from the State, etc." Burroughs, Taxation, p. 155.

III.

Some attempt has been made by counsel for defendant to show that the license tax is a prohibition against the use of towboats. The least reflection will show that this was the result of confounding the tax with the remedy for collecting it.

The City charter gives the right to sue out an injunction to prevent defendants from conducting business, until the payment of the tax. That remedy was abandoned in the case at bar, as